THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.4969 OF 2005

Dated: 11th November, 2005.

Between:

B.V. Rama Rao … Petitioner

And

1. Deputy Registrar of Co-operative Societies/
   Divisional Co-op. Officer, Hyderabad East
   Division, R.R. District, and others. … Respondents

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WRIT PETITION NO.4969 OF 2005

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ORDER :

The petitioner seeks a Writ of Certiorari calling for the records relating to the order dated 22-2-2005 in C.T.A.No.113 of 2004 on the file of the A.P. Co-operative Tribunal, Hyderabad and to quash the same and consequently to set aside the confirmation of sale of the house bearing No.12-10-513 of Uppar Basti, Mylargadda, Secunderabad.

It is not in dispute that the writ petitioner availed a loan from the 2nd respondent Bank on hypothecation of the house bearing No.12-10-513 of Uppar Basti, Mylargadda, Secunderabad, belonging to his mother, the 5th respondent herein. It is also not in dispute that since the petitioner failed to repay the loan amount as per the terms of the loan agreement, at the instance of the 2nd respondent Bank an award was passed by the 1st respondent under Section 61 of The A.P. Co-operative Societies Act, 1964 (for short, 'the Act'). In pursuance thereof, the 2nd respondent Bank initiated execution proceedings and the house property mortgaged with the 2nd respondent Bank was put to auction on 23-12-2003. The third respondent was declared as the successful bidder in the said auction and the sale in favour of the third respondent was also confirmed on 17-2-2004. Aggrieved by the said order, the writ petitioner filed an appeal being C.T.A.No.113 of 2004 under Section 76 (1) of the Act. In the said appeal, it was contended that the appellant/writ petitioner was not served with the sale notice and therefore the sale conducted on 23-12-2003 was illegal and liable to be set aside. The further contention raised was that whereas the value of the mortgaged property was more than Rs.30 lakhs, the sale was confirmed for a throw away price of Rs.8.50 lakhs and therefore on that ground also the confirmation of sale is liable to be set aside. The 2nd respondent Bank as well as the 3rd respondent - auction purchaser who were also arrayed as respondents 2 and 3 in C.T.A.No.113 of 2004 contested the said appeal denying the allegations made by the appellant/writ petitioner. The Tribunal, having heard both the parties, by order dated 22-02-2005 dismissed the Appeal holding that there was a valid service of sale notice on the appellant/writ petitioner. Though the Tribunal on the basis of the valuation certificate produced by the appellant/writ petitioner found that the mortgaged property was sold for a lesser price, keeping in view the fact that the sale certificate was already issued and in pursuance thereof the sale deed was also registered even by the date of filing of the appeal, dismissed the appeal as

infructuous. The said order is under challenge in this writ petition.

I have heard the learned Counsel for both the parties and perused the material on record.

The learned Counsel for the petitioner vehemently contends that since there was no proper service of notice as required under Rule 52 (11) (b) of The A.P. Co-operative Societies Rules, 1964 (for short, 'the Rules'), the Tribunal ought to have allowed the appeal and set aside the sale in question. The learned Counsel also contended that having recorded a finding that the valuation certificate produced by the decree-holder Bank reflects much lesser valuation, the Tribunal has grievously erred in dismissing the appeal on the ground that it has become infructuous. The learned Counsel has placed before this Court a valuation certificate dated 18-6-2001 issued by a Licensed Surveyor, Secunderabad in which the property in question was valued at Rs.23,40,000/- and contended that the sale for a consideration of meagre sum of Rs.8.50 lakhs was irregular and liable to be set aside.

It is to be noted that Sub-rule (11) of Rule 52 has prescribed the procedure to be followed in respect of an attachment and sale of immoveable property in execution of decrees, decisions or orders. As per the said Rule, the demand notice has to be issued by the Registrar and it shall contain the name of the defaulter, the amount due, the time allowed for payment and the particulars of the properties to be sold. A copy of such demand notice shall be served by the Sale Officer upon the defaulter or upon some adult male member of his family at his usual place of residence or upon his authorised agent or if such personal service is not possible shall be affixed on some conspicuous part of his last known residence or on some conspicuous part of the immoveable property about to be sold.

In the case on hand, it is not in dispute that the sale notice was served on the 5th respondent herein who is the mother of the writ petitioner and in whose name the mortgaged property stands. That apart, the sale notice was also served on the wife of the writ petitioner. Both of them have acknowledged the receipt of the sale notice,

in which it was specifically mentioned that the sale will be conducted on 23-12-2003. That apart, the sale notice was also affixed on the house property which was sought to be auctioned. It is relevant to note that the 5th respondent, the mother of the writ petitioner, is also one of the judgment-debtors as per the Award dated 12-6-2001 which was sought to be executed. Having regard to the facts and circumstances, I am unable to hold that there was no proper service of sale notice as required under the statute. The Tribunal below has rightly rejected the said objection raised by the writ petitioner.

So far as the other objection raised with regard to the valuation of the mortgaged house property, the learned counsel for the 2nd respondent Bank submits that the Tribunal below has wrongly observed that the valuation certificate produced by the decree-holder Bank reflects lesser valuation. The learned Counsel points out that there is absolutely no reason to disbelieve the valuation certificate produced by the 2nd respondent Bank in which it was clearly stated that the house in question was purchased in the year 1953 and in the year 2000 the 1st & 2nd floors were constructed and therefore it is necessary to take into consideration the depreciation in the value. Since the valuation certificate dated 18-6-2001 produced by the writ petitioner was cryptic and does not contain the depreciation of the value, the same ought not to have been relied upon by the Tribunal.

It is to be noted that Rule 52 of the Rules provides for the procedure to be followed in execution of the decrees, decisions or orders in detail. Sub-rule (13) of Rule 52 provides that any person either owning or holding an interest in the immoveable property which has been sold by the Sale Officer may apply to the Registrar to have the sale set aside on depositing the amount of arrears specified in the proclamation of sale as well as a sum equal to 5% of the purchase money within 30 days from the date of sale in which event the Registrar shall pass an order setting aside the same. That apart, he is also entitled to seek to set aside the sale on the ground of material irregularity or mistake or fraud in publishing or conducting the sale under Rule 52 (14) (i). Admittedly, the petitioner has not availed any of the said remedies and the sale which was affected on 23-12-2003 was confirmed on 17-2-2004. Thereafter, a sale certificate was also issued on 23-2-2004 in terms of Rule 52 (14) (v). As

expressed above, there was proper service of sale notice and therefore the petitioner was very well aware of the sale conducted on 23-12-2004. If that be so, the objection raised by the petitioner in the appeal without taking any steps for setting aside the same as provided under the above said Rules does not appear to be bona fide. The Tribunal below has rightly declined to interfere with the sale certificate issued under Rule 52 (14) (v) in the absence of any allegation of fraud. Absolutely, no case is made out to show that the impugned sale was irregular or in violation of any provisions of the statute.

For the aforesaid reasons, I do not find any reason to interfere with the impugned order.

The Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

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11th November, 2005.

Note:- CC by one week.

(B/O)

Gbs